

RECEIVED

AUG 25 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

BellSouth Telecommunications, Inc.,
BellSouth Tariff FCC
No. 1 Access Service

To: The Competitive Pricing Division

) 98-161

)
)
) BellSouth
) Trans. No. 476
)
)
)

PETITION TO REJECT, OR TO SUSPEND AND INVESTIGATE,
BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Richard J. Metzger
Vice President & General
Counsel
Association for Local
Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 969-2583

August 25, 1998

SUMMARY

BellSouth's proposed DSL tariff is patently illegal because: (1) it disregards the Commission's long-standing requirement that rates for this traffic be determined by state commissions; (2) it is not an access service; (3) if it were an access service, it would violate Commission policy by imposing access charges on local calls to Information Service Providers ("ISPs").

The reasons why BellSouth is vigorously pursuing so illegal a path are obvious. First, BellSouth and other ILECs make no secret of the fact they are trying to make an end-run around current state regulation of this traffic.¹ Second, twenty states have held that incumbents must pay reciprocal compensation on this traffic when it is exchanged with competitive local exchange providers ("CLECs"). If BellSouth were to succeed in smuggling this traffic into a new and jurisdictionally inappropriate forum, it would then try to rely on this Commission's acceptance of its filing to argue that states lack jurisdiction to enforce their reciprocal compensation orders. Third, this filing seeks to advance the incumbents' goal of imposing access charges on local

¹ "GTE ... expects approval at the federal level to take only 15 to 20 days, versus 90 days or more at the state level. The GTE tariff filing contrasts markedly with other telcos' approaches, which have been tied to state processes ..." Broadband World, April 20, 1998, at 76.

calls to ISPs -- a step the Commission has consistently rejected.
BellSouth's DSL tariff should be rejected in clear and
unequivocal terms by the Division.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. BELLSOUTH'S DSL TARIFF PROPOSAL VIOLATES THE COMMISSION'S WELL ESTABLISHED RULE THAT SUCH RATES SHOULD BE DETERMINED BY THE STATES	1
A. BellSouth's DSL Tariff Carries Only Intrastate Traffic	4
B. Abrupt Elimination of State Ratemaking Authority Over Local Data Rates Is a Bad Idea, Particularly In the Context of a Tariff Suspension Order	6
C. The Division Should Not Permit Incumbents to Shop For a New Forum on ISP Reciprocal Compensation by Allowing BellSouth to Pretend this Traffic Is Interstate....	7
II. BELLSOUTH'S PROPOSED ADSL SERVICE IS NOT AN ACCESS SERVICE	11
III. BELLSOUTH'S ADSL SERVICE ATTEMPTS TO IMPOSE ACCESS CHARGES ON ISPS CONTRARY TO THE COMMISSION'S EXISTING RULES	12
IV. BELLSOUTH HAS FAILED TO SHOW IT IS NOT ENGAGED IN A "PRICE SQUEEZE" OR HAS UNBUNDLED THIS SERVICE AS REQUIRED	15
CONCLUSION	17

RECEIVED

AUG 25 1998

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
BellSouth Telecommunications, Inc.,)
BellSouth Tariff FCC) BellSouth
No. 1 Access Service) Trans. No. 476
)
)
To: The Competitive Pricing Division)

PETITION TO REJECT, OR TO SUSPEND AND INVESTIGATE,
BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby petitions the Commission pursuant to Section 1.733(a)(iv)(A) of the Commission's Rules, 47 C.F.R. § 1.773(a)(iv)(A), to reject, or alternatively to suspend for the maximum time period allowed, BellSouth Transmittal No. 476 introducing "BellSouth ADSL Service, an interstate data transport service" (BellSouth Transmittal Letter at p. 1).²

I. BELL SOUTH'S DSL TARIFF PROPOSAL VIOLATES THE COMMISSION'S WELL ESTABLISHED RULE THAT SUCH RATES SHOULD BE DETERMINED BY THE STATES.

A. BellSouth's DSL Tariff Carries Only Intrastate Traffic.

When a Part 69 local exchange carrier provides local exchange access, whether special access or switched, it carries telecommunications calls from an end user to the point-of-

² See Rule 1.773(a)(3)(iv) ("a high probability that the tariff would be found unlawful after investigation" constitutes a ground for suspension or investigation).

presence ("POP") of an interLATA carrier ("IXC") within the same Local Access Transport Area ("LATA"), at which point the IXC transports the call to a different LATA, where it is terminated to the called end user.

In the case of switched access, the jurisdictional nature of the originating exchange access is determined by the geographical locations of the originating and terminating LATAs. If the LATAs are in the same state, the originating exchange access is an intrastate service. If they are in different states, it is an interstate service. Applying this switched access test to BellSouth's alleged DSL access proposal (alleged because it is not really an access service, see Part II infra), the telecommunications portion of the DSL call terminates at the point where the call reaches an ISP interconnected to BellSouth because ISPs are end users, and any associated information services provided by the ISP are irrelevant in determining jurisdictional end points. See, e.g., In the Matter of Federal-State Joint Board on Universal Service, Report to Congress (CC Docket No. 96-45, released April 10, 1998): "Under our framework, Internet service providers are not treated as carriers for purposes of interstate access charges .." (at ¶ 106).³

³ See also: "Some parties argue that we should reclassify Internet service providers as telecommunications carriers in order to address congestion of local exchange networks caused by Internet usage. We note that the Commission addressed this argument last year in the Access Reform proceeding, and decided to continue to treat Internet service providers as end users for purposes of access charges." (*id.* at ¶ 100); and "... we do not treat an information service provider as providing a telecommunications (continued...)"

Because ISPs would ordinarily interconnect with BellSouth in the same LATA, the traffic carried by BellSouth's DSL tariff is intrastate when analyzed using the switched access test. Furthermore, if any ISPs would choose to interconnect with BellSouth for this service outside the originating LATA, the traffic would still remain intrastate so long as the terminating LATAs were within the same state. Only in the rare situations where an ISP chose to interconnect in a different state would BellSouth's proposed service be interstate, applying a switched access jurisdictional test.

Applying the jurisdictional test for special access produces the same result. Where a special access facility happens to carry a single broadband call, the test is the same as for switched access. Where a special access facility carries multiple telecommunications calls, the Commission has required that such facilities be treated as interstate when the individual calls are 10% or more interstate. MTS and WATS Market Structure -- Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 4 FCC Rcd 5660 (1989). Assuming solely for the sake of argument that the special access test were applicable in the case of ISPs, and that the broadband facility were to carry multiple calls to an ISP --

³(...continued)
service to its subscribers. The service it provides to its subscribers is not subject to Title II, and is categorized as an information service. The information service provider, indeed, is itself a user of telecommunications ... " (id. at ¶ 69 n.138).

a highly unusual situation since the point of ADSL is to provide more bandwidth for a single call -- each of those telecommunications messages would still end at the ISP, and thus would still be intrastate traffic.

BellSouth's pleading is remarkably silent on the critical issue of jurisdiction, asserting only that: "This publication is being issued to introduce BellSouth ADSL service, an interstate data transport service" (BellSouth Transmittal Letter at p. 1). When GTE introduced a similar ADSL service earlier this year, it offered three reasons why this traffic is assertedly interstate: (1) "the record in a number of Commission proceedings"; (2) the traffic's asserted resemblance to special access; and (3) the statement that the offering "constitutes an 'access' service" (GTE D&J at 4).⁴ These contentions were factually unsupported and legally irrelevant.

GTE's claim that "the record in a number of Commission proceedings" supported the interstate nature of this traffic was buttressed only by a citation to GTE's comments in the Notice of Inquiry, Usage of Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, 96-288, released December 24, 1996 ("Internet NOI"; D&J at 4 n.2). GTE provided no citation to the portion of this pleading where GTE makes such a demonstration. The closest might be GTE's

⁴ The GTE ADSL filing (Trans. No. 1148) is now under investigation in CC Docket No. 98-79. GTE's case is due on September 3, replies on September 14, and GTE's rebuttal on September 21. GTE ADSL ODI Order released August 20, 1998, at ¶ 21.

unsupported statement at p. 31 that: " ... the preponderance of Internet access usage is interstate"

But the truth is quite different. First, the Commission declined to subject ISPs to access charges in its Access Charge Reform Order, CC Docket No. 96-262 (released May 16, 1996) (at ¶ 341).

Second, the Eighth Circuit recently rejected the claim that ISPs use the network in the same fashion as IXC's, in the course of upholding the Commission's Access Charge Reform Order (slip opinion issued August 19, 1998, in 97-2618 at 39 n. 9):

"ISPs subscribe to LEC facilities in order to receive local calls from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast, uses the LEC facilities as an element in an end-to-end long-distance call that the IXC sells as its product to its own customers."⁵

Third, the assertion that local calls to ISPs "resemble" special access is irrelevant because, as noted supra, even if such a comparison were appropriate, each DSL call has exactly the same end points for the "telecommunications service" -- one at the non-ISP end user location, and the other at the ISP end user point. That means that every such call is intrastate using the same criteria as the "10% contamination" rule.

⁵ The Commission's attorneys in this appeal responded to the incumbents' claim that local calls to ISPs must be treated as interstate by pointing out that "The Commission has determined ... to require the ISP (or other business line user) to pay intrastate charges for its line ..." (FCC Brief in Southwestern Bell Telephone Co. v. FCC, 8th Cir. No. 2618, filed December 16, 1997, at 80).

Fourth, the claim that GTE's offering "constitutes an 'access' service" (D&J at 2) was irrelevant, since even if this claim were true, access can be either interstate or intrastate.

B. Abrupt Elimination of State Ratemaking Authority Over Local Data Rates Is a Bad Idea, Particularly In the Context of a Tariff Suspension Order.

While BellSouth makes no mention of the fact in its D&J, the states' authority over the rates on local data access services has long been acknowledged.⁶ See, e.g., Digital Tornado: The Internet and Telecommunications Policy, K. Werbach, OPP Working Papers, March 1997, at 48: "The phone call to reach an ISP is usually considered a local call" It would be institutionally counter-productive for the Commission now to eliminate current state ratemaking authority over these calls by permitting BellSouth's DSL tariff proposal to take effect.

There is no avoiding the fact that permitting BellSouth's tariff to take effect would create confusion concerning state authority over this traffic. Parties would become entangled in trying to create factual distinctions between local rates to ISPs that have been reviewed by the states and BellSouth's present proposal, and the Division would have to formulate some principled way to stop any incumbent that wanted to escape state regulation by filing its own interstate rates for local calls to

⁶ The situation where a local data access call crosses a state line presents a special situation that is quite rare.

ISPs.⁷

The Division should not precipitate a pointless and unnecessary conflict between the states and the Commission concerning jurisdiction over these calls. If there is any need for a change in the jurisdictional treatment of this traffic -- and ALTS is not suggesting that there is any such need -- it should only be done after consultation between the Commission and the states, with a full opportunity for all parties to comment. The limited time permitted for a tariff protest, and the attendant lack of opportunity for state involvement, is exactly the wrong way to take such an important step.⁸

C. The Division Should Not Permit Incumbents to Shop For a New Forum on ISP Reciprocal Compensation by Allowing BellSouth to Pretend this Traffic Is Interstate.

Not only is BellSouth's claim that this traffic is

⁷ At its recent Summer meeting in Seattle, NARUC adopted a resolution in which it concluded that:

"Resolved ... that reciprocal compensation arrangements, including those for calls to ISPs, are subject to state authority without the need for the FCC to intervene or otherwise act on this matter; and be it further

"Resolved, that if the FCC intervenes regarding the broader jurisdictional issue of Internet access over the PSN, it should work cooperatively and expeditiously with the states, to consider under what circumstances and through what mechanisms this traffic may be treated as interstate, intrastate, or jurisdictionally mixed"

⁸ The presence of a palpable state involvement in BellSouth's is highlighted by the fact that ADSL provisions classic intrastate POTS service in addition to its dedicated high-speed loop transport. There is no way that BellSouth can claim that such a service is somehow interstate, since the POTS components returns to the local switch.

interstate access devoid of any merit, it is also motivated by BellSouth's desire to escape the unanimous decisions of twenty state jurisdictions that incumbents must pay reciprocal compensation when they exchange this traffic with CLECs. While jurisdictionally defective tariff filings should always be rejected by the Division, the need for vigilance is heightened in situations like the present where the filing party seeks to avoid its regulatory obligations elsewhere. The ordinary comity afforded between the states and the Commission requires that BellSouth's current filing be rejected.

Twenty state commissions have ruled on the reciprocal compensation issues, and none of these decisions have agreed with BellSouth's theory that this traffic is interstate:

- Arizona Corporation Commission, Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions with U S West Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Opinion and Order, Decision No. 59872, Ariz. CC Docket Nos. U-2752-96-362 and E-1051-96-362 (Oct. 29, 1996)
- Colorado Public Utilities Commission, Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with U S West Communications, Inc., Decision Regarding Petition for Arbitration, Decision No. C96-1185, Co. PUC Docket No. 96A-287T (Nov. 5. 1996)
- Connecticut Department of Public Utility Control, Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Service Provider Traffic, Final Decision, Conn. DPUC Docket No. 97-05-22 (Sept. 17, 1997)
- Florida Public Service Commission, Complaint of World Technologies, Inc., Against BellSouth Corporation; No. 971478-TP (August 4, 1998, agenda meeting)

- Illinois Commerce Commission, Teleport Communications Group, Inc. v. Illinois Bell Telephone Company, Ameritech Illinois: Complaint as to Dispute over a Contract Definition, Opinion and Order, Ill. CC Docket No. 97-0404 (Mar. 11, 1998)
- Maryland Public Service Commission, Letter from Daniel P. Gahagan, Executive Secretary, to David K. Hall, Esq., Bell Atlantic - Maryland, Inc., Md. PSC Letter (Sept. 11, 1997)
- Michigan Public Service Commission, Application for Approval of an Interconnection Agreement Between Brooks Fiber Communications of Michigan, Inc. and Ameritech Information Industry Services on Behalf of Ameritech Michigan, Opinion and Order, Mich. PSC Case Nos. U-11178, U-111502, U-111522, U-111553 and U-111554 (Jan. 28, 1998)
- Minnesota Department of Public Service, Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCIMetro Access Transmission Services, Inc. and MFS Communications Company for Arbitration with U S West Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Order Resolving Arbitration Issues, Minn. DPS Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Dec. 2, 1996)
- Missouri Public Service Commission, Petition of Birch Telecom of Missouri, Inc. for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection with SWBT, Case No. TC-98-278 (April 23, 1998).
- New York Public Service Commission, Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Order Closing Proceeding, NY PSC Case No. 97-C-1275 (Mar. 19, 1998)
- North Carolina Utilities Commission, Interconnection Agreement between BellSouth Telecommunications, Inc. and US LEC of North Carolina, Inc., Order Concerning Reciprocal Compensation for ISP traffic, NC UC Docket No. P -55, SUB 1027 (Feb, 26, 1998)
- Oklahoma Corporation Commission, Application of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc. for an Order Concerning Traffic Terminating to Internet Service Providers and Enforcing Compensation Provisions of the Interconnection Agreement with Southwestern Bell Telephone Company, Okla. CC Cause No. PUD 970000548 (Feb. 5, 1998)

- Oregon Public Utility Commission, Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Decision, Or. PUC Order No. 96-324 (Dec. 9, 1996)
- Pennsylvania Public Utility Commission, Petition for Declaratory Order of TCG Delaware Valley, Inc. for Clarification of Section 5.7.2 of its Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc., P-00971256 (June 2, 1998).
- Tennessee Regulatory Authority, Petition of Brooks Fiber to Enforce Interconnection Agreement and for Emergency Relief, Tenn. RA Docket No. 98-00118 (Apr. 21, 1998)
- Texas Public Utility Commission, Complaint and Request for Expedited ruling of Time Warner Communications, Order, Tex. PUC Docket No. 18082 (Feb. 27, 1998)
- Virginia State Corporation Commission, Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell-Atlantic-Virginia, Inc. and Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers, Final Order, Va. SCC Case No. PUC970069 (Oct. 24, 1997)
- Washington Utilities and Transportation Commission, Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and U S West Communications, Inc. Pursuant to 47 U.S.C. § 252, Arbitrator's Report and Decision, Wash. UTC Docket No. UT-960323 (Nov. 8, 1996), aff'd U S West Communications, Inc. v. MFS Intelenet, Inc., No. C97-22WD (W.D. Wash. Jan. 7, 1998
- West Virginia Public Service Commission, MCI Telecommunications Corporation Petition for Arbitration of Unresolved Issues for the Interconnection Negotiations Between MCI and Bell Atlantic - West Virginia, Inc., Order, WV PSC Case No. 97-1210-T-PC (Jan. 13, 1998)
- Wisconsin Public Service Commission, Contractual Disputes About the Terms of an Interconnection Agreement Between Ameritech Wisconsin and TCG Milwaukee, Inc., 5837-TC-100 (May 13, 1998).⁹

⁹ Two states have pending for final action hearing examiner recommendations finding that the calls are local -- Delaware and Georgia -- and the issue is involved in proceedings before at least six additional states in Alabama, Alaska, California, Indiana,

(continued...)

The pendency of this issue in numerous state forums -- and the total absence of any support for BellSouth's jurisdictional theory -- is thus an additional and important indication that local calls to ISPs are jurisdictionally interstate."

II. BELLSOUTH'S PROPOSED ADSL SERVICE IS NOT AN ACCESS SERVICE.

The provisioning of local exchange access by a Part 69 local exchange carrier typically involves carrying a telecommunications call from an end user to the POP of an IXC located in the same LATA. Once an interstate local exchange access service has been properly tariffed by a Part 69 carrier, that service can indeed be ordered and used by any user for interstate purpose. However, the tariff must first start as a legitimate local exchange access tariff.

BellSouth's DSL proposal plainly fails to qualify as a legitimate Part 69 exchange access tariff because it fails to provide access to the POP of an interexchange carrier. As BellSouth makes clear in its D&J, the DSL service goes only to ISPs that are interconnected to BellSouth. Because it is absolutely settled under current Commission precedent that ISPs are end users, and not telecommunications carriers (whether interLATA or local), BellSouth's DSL tariff cannot constitute local exchange access under Part 69. See, e.g., In the Matter of Federal-State Joint Board on Universal Service, Report to

⁹(...continued)
Kentucky and Ohio.

Congress (CC Docket No. 96-45, released April 10, 1998): "Under our framework, Internet service providers are not treated as carriers for purposes of interstate access charges .." (at ¶ 106).

III. BELLSOUTH'S ADSL SERVICE ATTEMPTS TO IMPOSE ACCESS CHARGES ON ISPS CONTRARY TO THE COMMISSION'S EXISTING RULES.

As noted above, it is manifestly clear under long-standing and recently reaffirmed Commission precedent that ISPs are not "telecommunications carriers," and thus are not subject to access charges. Access Charge Reform Order, CC Docket No. 96-262 (released May 16, 1996) (at ¶ 341, citing MTS and WATS Market Structure, Memorandum Opinion and Order, Docket No. 78-82, 97 FCC 2d 682, 711-22, and Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Order, 3 FCC Rcd 2631 (1988)).

If BellSouth's DSL tariff were actually an access service (and it clearly is not for the reasons set forth supra in Part II), then the proposal plainly violates this rule by applying access charges to local traffic delivered to an ISP.¹⁰ While ISPs clearly have the same right as any end user to order services out of the incumbents' Part 69 tariffs, the above precedents make it clear that ISPs cannot be forced to receive traffic pursuant to access tariffs. Here BellSouth economically coerces ISPs into paying its access charges by making it the

¹⁰ The situations where a calling end user makes a long distance call to reach an ISP-end user are different from local seven-digit calls to ISPs because access charges are ordinarily be involved in the former case, but not in the latter.

only way they can obtain this functionality. Accordingly, BellSouth's DSL tariff violates Commission policy by treating ISPs as telecommunications carriers.

The fact BellSouth proposes to use its monopoly power over loop enhancements to force ISPs to pay access charges is irrelevant as a matter of law and policy. It is irrelevant as a matter of law because nowhere in the Commission's extensive discussion of this issue has the Commission ever added the caveat: "except where loop enhancements are involved." Indeed, Commission policy is unambiguous and comprehensive: "Under our framework, Internet service providers are not treated as carriers for purposes of interstate access charges ..." (Report to Congress at ¶ 106). Accordingly, BellSouth's attempt to force IPS onto access charges is legally unavailing.¹¹

BellSouth's resort to its control over loop provisioning fails to make any difference as a policy matter. Putting aside whether the particular rates and structure proposed in BellSouth's current DSL proposal might be attractive to ISPs (and they may well prove to be attractive to ISPs, though not necessarily as access services), creation of such a loop-hole in the current Commission requirements would clearly be bad policy. Currently, almost all Internet access traffic is carried over loop facilities that, with relatively few exceptions, at best can

¹¹ In light of the patent illegality of BellSouth's DSL tariff, ALTS will not address the manner in which this shifting of payment responsibility for access charges, as well as other specifics of BellSouth's DSL tariff filing, violates particular requirements of Part 69.

only support 56 kps modems or ISDN. Incumbents can use their monopoly control over the timing and nature of any advancements in loop speeds to roll out "Internet access" services at prices that would be attractive to enough spectrum-hungry end users to be profitable, even though many Internet users could not and would not choose to buy the service at those price levels.

Although pricing "Internet access services" in this manner makes perfect sense to a rational profit-maximizing monopolist, it would harm the development of the Internet in two important ways. First, the profit-maximizing levels set by the monopolist would not be purchased by all individuals. Many end users would be cut-off from higher connection speeds, thereby slowing the overall growth of the Internet. Second, by using their monopoly power to interpose themselves between the ISPs and their end user customers seeking higher speeds, the incumbents could easily unhook significant portions of the ISPs' current customer base, and divert them to an incumbent affiliate or favored carrier.¹² Indeed, just the threat of such a diversion could force some ISPs to reach some accommodation with the incumbents.

Currently these policy concerns are minimized because the incumbents' new local data services are subject to state review (see Part I supra, concerning the jurisdictional issues raised by BellSouth's DSL proposal). Because state commissions take care

¹² This danger is underscored by the fact that nowhere in BellSouth's D&J does it explain how unbundled portions of its ADSL service offering would be made available to non-affiliated ISPs pursuant to the Commission's Computer III requirements.

to balance issues of cost recovery against the need to insure the widest possible availability of advanced Internet access services, potentially harmful pricing decisions by the incumbents have largely been avoided. And while this Commission could attempt to pursue these same goals, it has neither the experience nor the access to the pertinent facts possessed by the states. Accordingly, it would plainly be bad policy for the Commission to now create a loophole in the Commission's mandated treatment for calls to ISPs.

IV. BELLSOUTH HAS FAILED TO SHOW IT IS NOT ENGAGED IN A "PRICE SQUEEZE" OR HAS UNBUNDLED THIS SERVICE AS REQUIRED.

As noted above in discussing the need for state involvement, there is no serious question that incumbents have an inherent ability to subject potential competitors to a "price squeeze" for services like BellSouth's ADSL service. See, e.g., Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion, Order, and NPRM released August 7, 1998, at ¶ 102 ("Wireline Advanced Services Order"; raising the issue of a separate subsidiary's ability to exert a "price squeeze" upon non-affiliated ISPs).

In this regard, ALTS supports NorthPoint's observations, made in connection with GTE's ADSL filing, that the incumbent had failed to show that its rate was consistent with the prices charged by GTE for components of this service needed by potential competitors (NorthPoint Petition to Reject filed May 22, 1998, at 2:

"The only basis for assessing the costs of GTE's retail DSL service is to carefully examine the cost components applicable to the provision of DSL service. These components include, among other things, the cost of an unbundled loop and cross-connect, the costs of the equipment and transport required to provide DSL, the cost of necessary collocation, and allocated overhead costs."

"In addition to recovering the costs of an unbundled digital loop, however, GTE's retail ADSL rates must be high enough to recover several other significant cost components faced by any DSL service provider. For example, as set forth in the GTE ADSL tariff, GTE's planned ADSL services requires that ADSL equipment be placed on the central office end of an existing local loop, that modifications be made to the inside wiring, and that the traffic be delivered to an aggregation point designated by GTE."

But the ability of protesting parties to bring the Commission's attention to predatory behavior is severely limited in the present case by BellSouth's refusal to provide the cost data needed to reveal such activity (see BellSouth's letter dated August 18, 1998, providing only redacted cost support for Transmittal No. 476). Imposition of a confidentiality requirement within the already narrow time limits required for a protest makes meaningful cost review impossible. Rather than permit an unsupported filing to take effect, the Commission should suspend it for the maximum period possible.

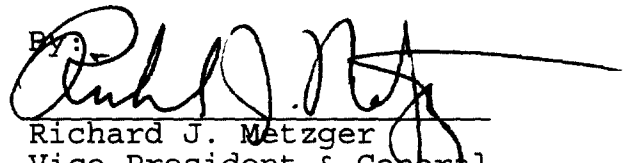
Additional anti-competitive threats are also raised by the absence of any demonstration from BellSouth that: (1) the components of its ADSL service constituting network elements are actually being made available to competitors (see GTE ADSL ODI Order at ¶ 19); (2) BellSouth will make its ADSL service available for resale pursuant to section 251(c)(4) as required by the Wireline Advanced Services Order (id. at ¶ 19: "We note that,

by using its network to provide DSL service, GTE is subject to the section 251 obligations DSL services offered by ILECs are subject to the resale requirements of section 251(c)(4)"; and, (3) components of BellSouth's service are made available to ISPs pursuant to Computer III (see n. 13, supra). In the absence of such demonstrations, the tariff should be rejected.

CONCLUSION

For the foregoing reasons, the above tariff transmittal should be rejected. Alternatively, it should be suspended for the maximum time period allowed by statute.

Respectfully submitted,

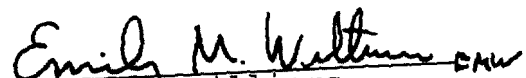

By: _____
Richard J. Metzger
Vice President & General
Counsel

**Association for Local
Telecommunications Services**
888 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 969-2583

August 25, 1998

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition to Reject, or to Suspend and Investigate by the Association for Local Telecommunications Services was served August 25, 1998, on the following persons by first-class mail or hand service, as indicated.


Emily M. Williams

Kathryn C. Brown*
Chief, Common Carrier Bureau
FCC, Room 500
1919 M St., N.W.
Washington, D.C. 20554

James D. Schlichting*
Deputy Chief, Common Carrier
Bureau
FCC, Room 500
1919 M St., N.W.
Washington, D.C. 20554

Jane Jackson*
Chief, Competitive Pricing
Division
FCC, Room 518
1919 M St., N.W.
Washington, D.C. 20554

Ed Krachmer*
Competitive Pricing Division
FCC, Room 518
1919 M St., N.W.
Washington, D.C. 20554

ITS*
2100 M St., N.W.
Room 140
Washington, D.C. 20037
* indicates hand service

Richard M. Sbarratta
General Attorney
BellSouth Corporation
Suite 1700
1155 Peachtree St.
Atlanta, GA 30309-3910